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UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
_____

Ex parte FABIO GIANNETTI
_____

Appeal 2009-010424
Application 10/656,776
Technology Center 2100
_____

Before JOHN A. JEFFERY, ST. JOHN COURTENAY III, and
DENISE M. POTHIER, Administrative Patent Judges.

POTHIER, Administrative Patent Judge.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's
rejection of claims 1-14 and 18. Claims 15-17 have been canceled. Br. 2.
We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Appellant's invention relates to a technique for authoring content,
such as a binding element, that does not itself contain any content or style
but rather has directors to style and content. In this manner, the content and

style are separated from the layout document and are referred to only
indirectly by the layout document. See generally Spec. 1, 3. Claim 1 is
reproduced below with the key disputed limitations emphasized:

> 1. A method of authoring content to be served by a server
> comprising:
>   authoring on a computing device a layout document which defines
> at least one area of a document which includes the content to be
> published;
>   authoring on a computing device at least one binding element
> which defines the identity and location of at least a portion of content
> and, using xpointer syntax, at least one style description file which
> defines a style to be applied to a selected portion of content;
>   in which the step of authoring the layout document includes
> allocating to the at least one defined area a director to at least one
> binding element such that when processed the published document
> includes in the defined area the content as directed by the binding
> element in the style as directed by the binding element.

The Examiner relies on the following as evidence of unpatentability:

Didier Martin, *Didier's lab report* 1-5[1] (2000), available at
http://lists.xml.org/archives/xml-dev/200012/msg00134.html ("Didier").

Steve DeRose et al., XML Pointer Language (XPointer) Version 1.0, W3C
Last Call Working Draft 8 January 2001 1-25[2] (2001), available at
http://www.w3.org/TR/2001/WD-xptr-20010108 ("DeRose").

David Hyatt, XBL – XML Binding Language, W3C Note 23 February 2001
1-35[3] (2001), available at http://www.w3.org/TR/2001/NOTE-xbl-
20010223/ ("Hyatt").

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[1] Five printed pages of this reference were provided, and these page numbers
correspond sequentially to the pages provided.
[2] Twenty-five printed pages of this reference were provided, and these page
numbers correspond sequentially to the pages provided.

<div align="center">THE REJECTIONS</div>

1.   The Examiner rejected claim 18 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Ans. 3-4.

2.   The Examiner rejected claims 1-14 and 18 under 35 U.S.C. § 103(a) as unpatentable over Hyatt, DeRose, and Didier. Ans. 4-17.[4]

<div align="center">THE NON-STATUTORY SUBJECT MATTER REJECTION</div>

Regarding independent claim 18, the Examiner finds that the recited "layout document processor circuit" is described as software in the Specification and fails to recite any hardware, such as a central processing unit (CPU) in the claimed system. Ans. 3-4, 18-19. For this reason, the Examiner concludes claim 18 is directed to software exclusively and is non-statutory. Id.

Appellant argues a circuit is necessary to execute software and directs our attention to the figures in the present application showing hardware, such as a computer. Br. 5-6.

<div align="center">ISSUE</div>

Under § 101, has the Examiner erred in rejecting claim 18 by concluding the recited system is directed to non-statutory subject matter?

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[3] Thirty-five printed pages of this reference were provided, and these page numbers correspond sequentially to the pages provided.
[4] Throughout this opinion, we refer to the Appeal Brief filed November 7, 2008 and the Examiner's Answer mailed February 6, 2009.

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FINDINGS OF FACT (FF)

1.   Appellant explains that a computer can act like a server and states that the processing apparatus or server 100 holds data to be distributed to devices. The apparatus or server 100 has a display 104, a keyboard 108, a mouse 110, and a processing circuit 106. Spec. 7:25-26; 8:10-18; Fig. 1.

2.   Appellant's processing circuit 106 includes a processing unit 112 (e.g., an INTEL PENTIUM series processor), a hard drive 114, a video driver 116, memory 118 (RAM and ROM), and an I/O subsystem 120. Spec. 8:18-24; Fig. 1.

3.   Appellant states the web content is held on the server 100. Spec. 9:11-12.

PRINCIPLES OF LAW

Under § 101, there are four categories of subject matter that are eligible for patent protection: (1) processes; (2) machines; (3) manufactures; and (4) compositions of matter. 35 U.S.C. § 101.

ANALYSIS

Based on the record before us, we find error in the Examiner's rejection of claim 18 as being directed to non-statutory subject matter. Appellant describes a computer that can be a processing apparatus or server 100. See FF 1. This apparatus 100 includes a processing circuit 106 having a processor, a hard drive, and memory. See FF 2. These components are hardware that collectively constitute the processing circuit. See id.

Because the Examiner provides no specific citation to the disclosure where the recited "layout document processor circuit" is described as

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software (Ans. 3-4), we presume the Examiner is alleging that the Specification does not describe a specific layout document processor circuit as hardware, but only discusses how the layout document is generated (e.g., software). We agree that Appellant does not state explicitly that the processing apparatus 100 produces the layout document. See FF 1-2. However, the Specification describes the apparatus 100 as a computer used to process and distribute data, such as the layout document data, to devices. See FF 1. Also, the apparatus 100 holds web content (e.g., layout document data). See FF 3. Thus, the computer 100 and its processing circuit 106 are used to produce and hold information for publishing content, including layout document data. See FF 2-3. We therefore find the "layout document processing circuit" that defines an area in a document where content is to be published includes the hardware described in the disclosure. See FF 2. Claim 18 therefore falls within a statutory category (e.g., a machine or manufacture) under § 101.

For the foregoing reasons, Appellant has persuaded us of error in the non-statutory subject matter rejection of independent claim 18.

THE OBVIOUSNESS REJECTION OVER HYATT, DEROSE, AND DIDIER

Regarding representative independent claim 1, the Examiner finds that Hyatt discloses (1) bindings to style information using a style sheet, and (2) binding elements to elements that include the identity and location of a content's portion by referencing a pointer. Ans. 5. The Examiner further states that the "#" symbol in Hyatt suggests and is a pointer to other binding elements. Ans. 22-23. The Examiner cites to DeRose to teach using an Xpointer for referencing internal structures of a document (Ans. 5-6) and to

Didier to teach specifically using an Xpointer to stylesheet information (Ans. 6, 22).

Appellant argues that DeRose fails to teach the recited director to the binding element. Br. 6-8. Appellant asserts that Examiner's discussion of DeRose's Xpointer as a director does not make sense and is not commensurate in scope with claim 1. Br. 7-8.

ISSUE

Under § 103, has the Examiner erred in rejecting claim 1 by finding that Hyatt, DeRose, and Didier would have taught or suggested collectively authoring a layout document by allocating to a defined area a director to at least one binding element?

ADDITIONAL FINDINGS OF FACT

4. Appellant states a director "directs a browser processing the XML portion to a binding element." Spec. 11:2-3

5. Hyatt teaches an XML binding language (XBL) that is a markup language for describing bindings that can be attached to element using cascading stylesheet (CSS) in other documents. Hyatt 1.

6. Hyatt describes XBL elements, including a `binding` element that describes a single XBL binding which dynamically binds new information to XML elements in other documents. Each binding has three optional components: (1) Content; (2) Methods and Properties; and (3) Behavior. Hyatt 4.

7. The `binding` element also includes: (1) a required `id` attribute that is a document-unique identifier and uniquely identifies a binding and (2)

an `extends` attribute used to specify the URL that specifies a particular binding document and a # notation must be used to point to a specific binding `id` within a binding document. Hyatt 4.

8.   Hyatt's `content` element contains child nodes and has an `id` attribute as a document-unique identifier. The subtree specified by the `content` element is referred to as the anonymous content template. The nodes are hidden from their parent and exist outside the normal document and are referred to as anonymous content. When a binding is attached and if certain conditions specified by the template are met, the `content` element's child nodes are inserted into the bound document under the bound element. Hyatt 4-5, 20.

9. Hyatt's `children` element is used inside anonymous content to specify insertion points for explicit content that might already exist underneath the bound element or for anonymous content generated by the base binding. Hyatt 5.

10. Hyatt teaches a `stylesheet` element that is used to specify a stylesheet that can be applied to anonymous content generated by bindings and to explicit children in the documents that use the binding. Hyatt 13.

11. Hyatt states that bindings can be attached to elements through CSS using the `binding` property. Hyatt 14.

12. DeRose teaches that an Xpointer is used to address the internal structures of XML documents and allows for the choice of internal parts based on various properties. DeRose 3.

13. Didier teaches a URL used to transform and return a fragment or a returned element (e.g., <detail> element) with a required format using the

following URL (e.g.,
/folder1/folder2/mydoc.xml#xpointer("/detail")?style=xhtml.xsl). Didier 3.

ANALYSIS

Based on the record before us, we find no error in the Examiner's
rejection of claim 1 which recites, in pertinent part, allocating to the least
one defined area a director to at least one binding element. We admit the
Examiner's position related to which cited reference and which component
in the references teaches the recited director has wavered. The Examiner
states, at one point, that DeRose teaches the director. See Ans. 6 ("[DeRose]
also teaches its application using a director . . . .") Particularly, the
Examiner finds that the code "href = '#Xpointer . . .'" teaches a director that
is defined as an attribute format. See id. On the other hand, the Examiner
states Hyatt teaches a # notation that suggests a pointer. See Ans. 5. And
the Examiner also explains that a director is a pointer, and that Hyatt
discloses a pointer by using the # notation. See Ans. 23.

Despite this confusion, we agree that the recited director can be a
pointer. Appellant has not specially defined a director (see generally
Specification), and consistent with the Specification (FF 4), a director can
direct or point a browser to a binding element as recited. Hyatt discusses a
binding element (e.g., a single XBL binding) that has optional components,
including an `extends` attribute. See FF 7. This attribute has a # notation
used to point to the specific binding `id` within a binding document or is "a
director" that will point to a specific binding `id` having a document-unique
identifier. See id. Thus, Hyatt also teaches a pointer as a director to a
binding (e.g., a binding element) through its binding `id`.

Moreover, claim 1 requires "a director to at least one binding element" and not "a director to the at least one binding element" which defines the identity and location of at least a portion of the content. Nonetheless, Hyatt discloses a binding element includes an `id` attribute and an optional content component which identifies at least a content portion. See FF 6-8. Also, the content component can include child nodes inserted into the bound document only when conditions are met and thus defines the identity of the content portion hidden from the parent and existing outside the normal document through an anonymous content template See FF 8. These children elements are used inside the anonymous content specifying an insert points for explicit content or a location of the content portion. See FF 9. We therefore find that the director that points to a specific binding `id`, which identifies a binding, also teaches and suggests a pointer to a binding element that defines the identity and location of a content portion as recited. Thus, despite Appellant's contentions (Br. 6), Hyatt teaches and suggests a pointer to a binding element that possess the recited characteristics and thus includes two levels of binders (e.g., # notation is a pointer that binds or is a binder to another binding element).

Appellant's argument focus on DeRose and how DeRose does not teach a director. See Br. 6-8. However, as explained above and by the Examiner (Ans. 23), Hyatt also teaches and suggests a director to a binding element as recited. See FF 6-9. Thus, while we agree that the Examiner's discussion of DeRose using an Xpointer to teach a director (see Ans. 6) is not commensurate in scope with claim 1, Appellant's attack on DeRose alone (Br. 6-8) does not demonstrate nonobviousness of the recited

Xpointer. See In re Merck & Co., Inc., 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Additionally, the Examiner relies on DeRose and Didier in combination with Hyatt's discussion of style sheets or the `stylesheet` elements (see FF 5, 10) to teach using Xpointer syntax to author a style description file. See Ans. 5, 20, 22. That is, Hyatt teaches a `stylesheet` element that can be applied to the anonymous content generated by the bindings. See FF 10. Hyatt explains that the bindings can be attached to elements using a CSS but does not describe an Xpointer. See FF 11. On the other hand, DeRose teaches that an Xpointer can be used to address internal structures of XML documents, such as Hyatt's `stylesheet` element used to specify a stylesheet applied to anonymous content generated by bindings (see FF 5, 10), based on various properties. See FF 12. Moreover, Didier specifically teaches using Xpointer syntax to author a style description file that defines a style to be applied to content portion. See FF 13. The references therefore collectively teach using an Xpointer syntax to author a style description file that defines a style to be applied to a selected content portion as recited.

Notably, claim 11 is broader in scope than claims 1, 14 and 18. Claim 11 does not recite using an Xpointer syntax, but rather a data structure comprising at least one style description which defines a style to be applied to a selected content portion. Claim 11 also does not allocate to an area "a director to at least a binding element," but rather a data structure that has a binding element in the layout document allocated to an area "as directed by a binding element." Thus, contrary to Appellant's assertions (Br. 6), claim 11 does not recite two levels of direction.

For the foregoing reasons, Appellant has not persuaded us of error in the obviousness rejection of: (1) independent claims 1 and 11; (2) independent claims 14 and 18 which recite limitations commensurate with claim 1 and are not separately argued (Br. 6-8); and (3) claims 2-10, 12, and 13 not separately argued with particularity (id.).

CONCLUSION

The Examiner did not err in rejecting claims 1-14 and 18 under § 103, but erred in rejecting claim 18 under § 101.

DECISION

The Examiner's decision rejecting claims 1-14 and 18 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD